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6 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

7 ANESSA PICKETT, individually, JC
8 PICKETT, a minor child, KV PICKETT,
9 a minor child, IAN PICKETT and
10 KHALIA PICKETT, husband and wife,
both individually and on behalf of their
minor children,

11 Plaintiffs,

12 vs.

13 LIBERTY MUTUAL INSURANCE
COMPANY,

14 Defendant.

Case No. 2:20-CV-0426-TOR

PROTECTIVE ORDER

15 **I. PURPOSES AND LIMITATIONS**

16 Discovery in this action is likely to involve production of confidential,
17 proprietary, or private information for which special protection may be warranted.
18 Accordingly, the parties hereby stipulate to and petition the Court to enter the
19 following Stipulated Protective Order. The parties acknowledge that this agreement
20 is consistent with Federal Rule of Civil Procedure 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery; the protection it affords from
2 public disclosure and use extends only to the limited information or items that are
3 entitled to confidential treatment under the applicable legal principles, and it does
4 not presumptively entitle parties to file confidential information under seal.

5 **II. “CONFIDENTIAL” MATERIAL**

6 “Confidential” material may include such documents as a party designates
7 confidential as provided herein. It is anticipated plaintiffs may designate the
8 following information as confidential:

- 9 1. Plaintiffs’ financial records;
- 10 2. Plaintiffs’ medical records.

11 It is anticipated that Liberty Mutual may designate the following information
12 as confidential:

- 13 1. Defendant’s internal policies and practices;
- 14 2. Information relating to Defendant’s underwriting procedures, including
15 pricing and rating;
- 16 3. Internal claim analysis;
- 17 4. Claims handling guidelines and related training material;
- 18 5. Reserving guidelines;
- 19 6. Reserve and/or reinsurance information;
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1 confidential material; and (3) any testimony, conversations, or presentations by
2 parties or their counsel that might reveal confidential material if designated as such
3 as provided in ¶5.2 below.

4 However, the protections conferred by this agreement do not cover
5 information that is in the public domain or becomes part of the public domain
6 through trial or otherwise. Interrogatory answers, responses to requests for
7 production, responses to requests for admission, deposition transcripts or exhibits,
8 pleadings, motions, affidavits, briefs and summaries of confidential information or
9 documents that quote, summarize, or contain materials entitled to protection may be
10 accorded status as stamped confidential documents, but to the extent feasible, shall
11 be prepared in such a manner that the confidential information is bound separately
12 from that not entitled to protection. “Confidential Material” shall mean all such
13 “Material” designated by any party as “Confidential – Subject to Protective Order.”

14 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

15 4.1 Basic Principles. A receiving party may use confidential material that
16 is disclosed or produced by another party or by a non-party in connection with this
17 case only for prosecuting, defending, or attempting to settle this litigation.
18 Confidential Material shall not be used for any business or any other purpose
19 whatsoever, and shall not be given, shown, made available, or communicated in any
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1 way to anyone except those specified in this agreement, below in subparagraph 4.2.
2 Confidential material may be disclosed only to the categories of persons and under
3 the conditions described in this agreement. Confidential material must be stored and
4 maintained by a receiving party at a location and in a secure manner that ensures that
5 access is limited to the persons authorized under this agreement.

6 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the designating party, a
8 receiving party may disclose any confidential material only to:

9 (a) the receiving party’s counsel of record in this action, as well as
10 employees of counsel to whom it is reasonably necessary to disclose the information
11 for this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of
13 the receiving party to whom disclosure is reasonably necessary for this litigation,
14 unless the parties agree that a particular document or material produced is for
15 Attorney’s Eyes Only and is so designated

16 (c) former partners, employees, officers, or agents of the parties who
17 counsel, in good faith, requires to provide assistance in the conduct of this lawsuit
18 and who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit
19 A);
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1 (d) experts and consultants to whom disclosure is reasonably necessary for
2 this litigation and who have signed the “Acknowledgment and Agreement to Be
3 Bound” (Exhibit A);

4 (e) the court, court personnel, and court reporters and their staff;

5 (f) copy or imaging services retained by counsel to assist in the duplication
6 of confidential material, provided that counsel for the party retaining the copy or
7 imaging service instructs the service not to disclose any confidential material to third
8 parties and to immediately return all originals and copies of any confidential
9 material;

10 (g) during their depositions or while providing other sworn testimony,
11 witnesses in the action to whom disclosure is reasonably necessary and who have
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
13 otherwise agreed by the designating party or ordered by the court provided, however,
14 that a party may use Confidential Material at a deposition or court proceeding of a
15 deponent or witness who has not already signed the certification in the form of
16 Exhibit A hereto, in which case, the Party’s obligation shall be to ask that the
17 deponent or witness sign the certification, but the Party’s right to proceed with the
18 deposition or court proceeding shall not depend on the deponent’s or witness’s
19 willingness to do so. In the event a deponent or witness being shown Confidential
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1 Material refuses to sign the certification, the deponent or witness shall not be
2 permitted to retain, reproduce, or copy all or any part of the Confidential Material.
3 Pages of transcribed deposition testimony or exhibits to depositions that reveal
4 confidential material must be designated as such according to ¶5.2 below , shall be
5 separately bound by the court reporter, and may not be disclosed to anyone except
6 as permitted under this agreement;

7 (h) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information.

9 (i) court reporters who take and transcribe testimony for use in this lawsuit;

10 (j) persons or entities to whom a party has a contractual, legal, or
11 regulatory obligation to provide Confidential Material, including insurers,
12 reinsurers, reinsurance intermediaries, retrocessionaries, regulators, retrocessionary
13 accountants, and auditors of any Party; and

14 (k) any person agreed to in writing by all parties or allowed by the Court.

15 (l) Counsel for each party to this lawsuit shall be responsible for
16 maintaining copies of acknowledgements signed by those people to whom that party
17 or his or her agents, employees, consultants, or counsel make available Confidential
18 Material.

1 4.3 Filing Confidential Material.

2 (a) Documents containing Confidential Material of any party shall not be filed
3 with the Court unless necessary for purposes of trial or substantive motions,
4 including without limitation, motions for preliminary injunction or summary
5 judgment, discovery related motions, or other Court matters.

6 (b) Before filing confidential material or discussing or referencing such
7 material in court filings, the filing party shall confer, pursuant to Fed. R. Civ. P. 26

8 (c)(1), with the designating party to determine whether the designating party will
9 remove the confidential designation, whether the document can be redacted, or
10 whether a motion to seal or stipulation and proposed order is warranted. During the
11 meet and confer process, the designating party must identify the basis for sealing the
12 specific confidential information at issue, and the filing party shall include this basis
13 in its motion to seal, along with any objection to sealing the information at issue. A
14 party who seeks to maintain the confidentiality of its information must satisfy the
15 requirements of, *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th
16 Cir. 2006). When documents are “attached to dispositive motions,” such as those for
17 summary judgment, parties must present compelling reasons for sealing them.
18 Otherwise, Fed. R. Civ. P. 26(c) provides that a particularized showing of good cause
19 is sufficient to seal records attached to non-dispositive motions. Failure to satisfy
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1 this requirement will result in the motion to seal being denied, in accordance with
2 the strong presumption of public access to the Court's files. *Foltz v. State Farm Mut.*
3 *Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Such a motion to seal shall be
4 noted for consideration in accordance with Local Civil Rule 7.

5 (c) The Clerk of the Court is directed to maintain under seal all documents
6 and transcripts of deposition testimony filed with this Court in this litigation by any
7 party which are, in whole or in part, designated as Confidential Material, including
8 all pleadings, deposition transcripts, exhibits, discovery responses, or memoranda
9 purporting to reproduce or paraphrase such information, PROVIDED that such
10 documents are ordered sealed by the Court or are the subject of a pending motion to
11 seal. The party filing such material shall designate to the Clerk that all or a
12 designated portion thereof is subject to this Order and is to be kept under seal. A
13 complete, unredacted set of documents filed under seal shall be provided by the
14 filing party to opposing counsel the same day the documents are filed, to the extent
15 counsel is otherwise entitled to review the redacted portions.

16 **V. DESIGNATING PROTECTED MATERIAL**

17 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

18 Each party or non-party that designates information or items for protection under
19 this agreement must take care to limit any such designation to specific material that
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1 qualifies under the appropriate standards. The designating party must designate for
2 protection only those parts of material, documents, items, or oral or written
3 communications that qualify, so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
9 to impose unnecessary expenses and burdens on other parties) expose the
10 designating party to sanctions.

11 If it comes to a designating party's attention that information or items that it
12 designated for protection do not qualify for protection, the designating party must
13 promptly notify all other parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, disclosure or discovery material that qualifies for protection
17 under this agreement must be clearly so designated before or when the material is
18 disclosed or produced.

1 (a) Information in documentary form: (*e.g.*, paper, or electronic documents
2 and deposition exhibits, but excluding transcripts of depositions or other pretrial or
3 trial proceedings), the designating party must affix the word “CONFIDENTIAL” to
4 each page that contains confidential material. If only a portion or portions of the
5 material on a page qualifies for protection, the producing party also must clearly
6 identify the protected portion(s) (*e.g.*, by making appropriate markings in the
7 margins).

8 (b) Interrogatories or requests for production or admission: the parties must
9 designate portions as Confidential Material by means of a statement at the
10 conclusion of such responses specifying the responses or parts thereof that are
11 designated as Confidential Material. The Legend “CONFIDENTIAL – SUBJECT
12 TO PROTECTIVE ORDER” shall be placed, stamped, or otherwise affixed on each
13 page of any set of responses to interrogatories or requests for production or
14 admission that contain Confidential Material.

15 (c) Testimony given in deposition or in other pretrial proceedings: the
16 parties and any participating non-parties must identify on the record, during the
17 deposition or other pretrial proceeding, all protected testimony, without prejudice to
18 their right to so designate other testimony after reviewing the transcript. Any party
19 or non-party may, within fifteen days after receiving the transcript of the deposition
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1 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
2 as confidential. The party designating portions of the transcript as confidential must
3 direct the court reporter to mark such portions as “CONFIDENTIAL – SUBJECT
4 TO PROTECTIVE ORDER.” If no designation is made by a statement to such effect
5 on the record during the course of the deposition or within thirty (30) days after
6 counsel’s receipt of the deposition transcript, the transcript shall be considered not
7 to contain any Confidential Material. Portions of the transcript and exhibits
8 designated as containing Confidential Material may only be disclosed in accordance
9 with the terms of this Protective Order. If a party or non-party desires to protect
10 confidential information at trial, the issue should be addressed during the pre-trial
11 conference.

12 (d) Other tangible items: the producing party must affix in a prominent
13 place on the exterior of the container or containers in which the information or item
14 is stored the word “CONFIDENTIAL.” If only a portion or portions of the
15 information or item warrant protection, the producing party, to the extent practicable,
16 shall identify the protected portion(s).

17 (e) In the case of verbal communications, the designating party shall
18 designate the communication as containing Confidential Material by advising the
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1 recipient orally at the time of the disclosure and in writing within ten (10) days after
2 the disclosure.

3 (f) This Agreement shall apply with equal force to all copies, notes,
4 summaries, or other compilations and recitations of Confidential Material

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive
7 the designating party's right to secure protection under this agreement for such
8 material. Upon timely correction of a designation, the receiving party must make
9 reasonable efforts to ensure that the material is treated in accordance with the
10 provisions of this agreement.

11 (a) The designating party may subsequently designate those documents or
12 other materials as Confidential Material by notifying all parties in writing in a
13 manner which reasonably identifies the documents or other material at issue within
14 thirty (30) days after discovery of its failure to designate. The designating party shall
15 also at its own expense cause all other parties to receive new copies of any such
16 documents or other materials bearing the confidential designation in accordance with
17 the method of designation specified in Paragraph 5.2. The receiving parties shall
18 then destroy the documents or other materials originally produced and replace them
19 with new copies bearing the confidential designation.
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1 (b) After service of a notice in accordance with this section claiming
2 Confidential Material was produced, no motion contesting the protected status of the
3 document or opposing a motion requesting confirmation of the protected status of
4 the document shall rely on an allegation that any protection as to the document was
5 waived by its production in this litigation, provided that: (1) the disclosure was
6 inadvertent, (2) the holder of the designating party took reasonable steps to prevent
7 disclosure, and (3) the holder took reasonable steps to rectify the error.

8 (d) To the extent any party who received such materials has disclosed the
9 materials to third parties before it received the designating party's written notice of
10 inadvertent disclosure, such party shall advise all third-party recipients that the
11 materials contain Confidential Material and are subject to a protective order, and
12 shall use its best efforts to retrieve such materials. No disclosure of such information
13 or materials shall be made once a party designates them as containing Confidential
14 Material, absent a Court order, and the terms of this Agreement shall govern all such
15 information or materials designated as Confidential Material.

16 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 designating party's confidentiality designation is necessary to avoid foreseeable,
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1 substantial unfairness, unnecessary economic burdens, or a significant disruption or
2 delay of the litigation, a party does not waive its right to challenge a confidentiality
3 designation by electing not to mount a challenge promptly after the original
4 designation is disclosed.

5 6.2 Meet and Confer. The parties must make every attempt to resolve any
6 dispute regarding confidential designations without court involvement. Any motion
7 regarding confidential designations or for a protective order must include a
8 certification, in the motion or in a declaration or affidavit, that the movant has
9 engaged in a good faith meet and confer conference with other affected parties in an
10 effort to resolve the dispute without court action. The certification must list the date,
11 manner, and participants to the conference. A good faith effort to confer requires a
12 face-to-face meeting or a telephone conference.

13 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
14 court intervention, any party may file and serve a motion to retain or remove the
15 confidentiality designation under Local Civil Rule 7. The burden of persuasion in
16 any such motion shall be on the designating party. All parties shall continue to
17 maintain the material in question as confidential until the court rules on the
18 challenge.

**VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and

1 (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 **IX. NON-TERMINATION AND RETURN OF DOCUMENTS**

4 Except to the extent a party is required, by internal procedures, regulation, or
5 other law, to retain Confidential Material, within 60 days after the termination of this
6 action, including all appeals, upon request by the designating party, each receiving
7 party must return all confidential material to the producing party, including all
8 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
9 appropriate methods of destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival
11 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
12 correspondence, deposition and trial exhibits, expert reports, attorney work product,
13 and consultant and expert work product, even if such materials contain confidential
14 material.

15 The confidentiality obligations imposed by this agreement shall remain in
16 effect until a designating party agrees otherwise in writing or a court orders
17 otherwise.

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1 **X. GENERAL PROVISIONS**

2 Nothing in this Agreement shall be construed as creating an obligation to
3 disclose information or documents protected by the attorney-client privilege,
4 attorney work product doctrine, or other applicable privileges or protections. No
5 Party shall be deemed to have waived any objection to the admissibility at trial of
6 any information or documents produced pursuant to this Agreement. If any
7 Confidential Material is used in any discovery or court proceeding before trial, it
8 shall not lose its confidential status solely through such use.

9 Each party represents and warrants that the individual signing this Agreement
10 on its behalf is fully authorized to sign on behalf of, and bind it.

11 **XI. MODIFICATIONS**

12 Nothing in this Order shall preclude any party from applying to the Court for
13 relief from this Order, or for additional or different protective provisions as the Court
14 may deem appropriate.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: August 6, 2021

Dated: August 6, 2021

s/Kathryn Knudsen

William C. Smart, WSBA #8192

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Attorneys for Defendant

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED, that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

Dated August 11, 2021.



Thomas O. Rice
THOMAS O. RICE
United States District Judge